

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2003-012774

11/13/2003

THE HONORABLE MICHAEL A. YARNELL

CLERK OF THE COURT
M. L. Smith
Deputy

FILED: 11/19/2003

CONTROL LOGIC INC

WILLIAM A KOZUB

v.

HERMAN SCHLOTTMANN, et al.

BRADLEY D WEECH

MINUTE ENTRY

4:30 p.m. In the courtroom.

Time set for oral argument on the parties' cross motions for summary judgment. Counsel, William A. Kozub, is present for Plaintiff. Counsel, Bradley D. Weech, is present for Defendants.

Court Reporter Lisa A. Humbeutel is present.

Oral Argument is heard.

IT IS ORDERED taking these matters under advisement.

LATER:

Plaintiff moves for summary judgment on its declaratory judgment count and requests entry of judgment in the form previously lodged. Defendants move for dismissal of all claims, apparently with prejudice, and an award of their costs and attorney's fees.

Count II of the Complaint is titled "Declaratory Judgment" and contains paragraph 16, which reads:

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16. Defendant Herman Schlottmann's consulting for the competitor company, Control Design, Inc., is a violation of the covenant not to compete. There is, therefore, an actual dispute between the parties arising out of a contract. Under the inherent powers of this court to enter injunctions, under Rule 65, Arizona Rules of Civil Procedure, and under the declaratory judgment act, Plaintiff is requesting a declaration from this Court that Defendant Schlottman is not allowed to consult, train or assist any person or company in the areas of postal sorting equipment and/or motor controls, as stated in the covenant not to compete. This declaration from this Court is necessary because Plaintiff stands to suffer extreme financial damage by Schlottmann's violation of this agreement.

Paragraph 16 of the complaint contains three concepts: a justiciable controversy, an alleged breach now, and in the future, of the covenant not to compete, and an enforceable covenant not to compete. While not express, the concept of a valid, reasonable and enforceable covenant not to complete is included within the wording of Paragraph 16 of the Complaint.

Defendants, in the Answer filed July 21, 2003, denied all the allegations of Paragraph 16 of the Complaint. A review of the entire answer confirms that Defendants admitted the text of the signed documents, denied any breach had occurred, but did not address the "validity, reasonableness and enforceability" of the covenant not to compete, other than the denial of Paragraph 16 of the Complaint.

After the filing of the Answer, the Defendants did stipulate on the record to the validity, reasonableness and enforceability of the covenants in the employment agreement.

Based on the undisputed and disputed facts taken most favorably to the party to be charged, the entire record in this case, and the case law cited by the parties,

IT IS ORDERED granting Plaintiff's Motion For Summary Judgment.

IT IS ORDERED denying Defendants' Motion For Summary Judgment.

FURTHER ORDERED finding the covenant not to compete in the employment agreement is valid, reasonable and enforceable.

FURTHER ORDERED otherwise denying all relief sought by Plaintiff.

FUTHER ORDERED otherwise denying all relief sought by Defendants.

FURTHER ORDERED each party having been partially successful in this action, each party shall bear their own costs and attorneys fees.

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FURTHER ORDERED signing this minute entry as the final judgment of this court in this action.

/s/ THE HONORABLE MICHAEL A. YARNELL

JUDGE OF THE SUPERIOR COURT